

In the United States District Court  
For the Southern District of Georgia  
Savannah Division

Tommy Lee Williams, Henrietta )  
Williams, Laquana Beniman, ) Civil Action  
Brian Jamar Williams, Dewayne ) File Number CV409-107  
Jermaine Williams, and )  
Latreka M. Edwards, )  
Plaintiffs, )  
v. )  
Bryan County, a Political )  
Subdivision of the State of )  
Georgia; City of Pembroke, a )  
Political Subdivision of the )  
State of Georgia; Clyde )  
Smith, Individually and as )  
Sheriff of Bryan County; Mark )  
Crowe, Individually, as a )  
Deputy Sheriff of Bryan )  
County and as the Chief of )  
Police of Pembroke Police )  
Department; Cleve White, )  
Individually, as a Deputy )  
Sheriff of Bryan County and )  
as a Police Officer of the )  
Pembroke Police Department; )  
and Susan Carrington )  
Individually, and as a Deputy )  
Sheriff of Bryan County, )  
Defendants.

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO DISMISS**

Come Now, Tommy Lee Williams ("Plaintiff"), Henrietta Williams, Laquana Beniman, Brian Jamar Williams, Jermaine Williams, and Latreka M. Edwards<sup>1</sup> and shows the court as follows:

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<sup>1</sup> Henrietta Williams, Laquana Beniman, Brian Jamar Williams, Jermaine Williams, and Latreka M. Edwards are sometimes

**STATEMENT OF FACTS**

Filed herewith is the Plaintiffs' Response to Defendants' Motion for Judgment on the Pleadings along with the Plaintiffs' Motion to Dismiss.

**ARGUMENT AND CITATION OF AUTHORITY**

Because of this court's order which denied the Plaintiffs' Motion to Allow an Amendment to the Complaint, the Plaintiffs now move this court for a dismissal of the remaining claims in this Court's jurisdiction, namely their 14th amendment rights, with prejudice and all other rights, if any, without prejudice. Absent consent, Rule 41(a)(2) of Federal Rules, provides for dismissal only by court order: "Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."

In *Diamond v. U.S.*, the Fifth Circuit established that the court was required to grant the dismissal but the only question was whether it was without prejudice or not. However, the court admitted that this holding has been criticized and held:

[T]he weight of authority is that the court may, in the exercise of its discretion, deny the motion or grant it and if it be granted such terms and conditions may be imposed as are proper.

267 F.2d 23, 25 (C.A.5 1959).

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collectively referenced herein as "Plaintiffs."

Among other things, this Court at no point exercised pendant jurisdiction over any state law claims. For example, the Court's choosing not to allow the amendment to the Complaint, had no lawful effect on Plaintiffs' ability to exercise their rights to bring those claims in state court. The Court's denying Plaintiffs' motion to amend effectively was a decision not to exercise pendant jurisdiction.

The only claims remaining in this Court are those under the 14<sup>th</sup> Amendment, and it is right to dismiss those claims with prejudice. All other claims of any kind should be dismissed without prejudice.

**CONCLUSION**

For reasons of clarity and fairness, this Court should grant the instant motion.

Respectfully submitted this 9<sup>th</sup> day of February, 2010.

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day duly served all parties in this case with ***Brief in Support of Plaintiffs' Motion to Dismiss*** in accordance with the directives from the Court Notice of Electronic Filing ("NEF"), which was generated as a result of electronic filing.

Respectfully submitted this 9<sup>th</sup> day of February, 2010.

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